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Pothoff and Taylor

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

SAMUEL W. WANI,

Plaintiff,

Case No. 3:17-CV-1011-YY

v.

**GEORGE FOX DEFENDANTS'
UNOPPOSED ALTERNATIVE
MOTION TO CONSOLIDATE**

GEORGE FOX UNIVERSITY,
PROVIDENCE MEDICAL GROUP, DR.
THOMAS CROY MD, DOMINICK FIX-
GONZALEZ, GREGG BOUGHTON,
CHRIS CASEY, JOHN BATES, IAN
SANDERS, GABE HABERLY, CRAIG
TAYLOR, DAVE JOHNSTONE, MARK
POTHOFF, SARAH TAYLOR

Defendants.

LR 7.1(a) Certification

The undersigned counsel for the moving defendants hereby certifies that on September 14, 2017, he personally conferred by telephone with plaintiff and counsel for defendants Providence Medical Group and Dr. Thomas Croy regarding the following motion, and was advised that plaintiff consents to the alternative motion to consolidate this case with Case 3:17-cv-01192-YY, captioned as *Samuel Wani vs. Thomas Croy, et al.*, and referred to below as “Case 1192”, in the event that the George Fox Defendants’ pending Motion to Dismiss in Case 1192, now joined in by Dr. Croy, is not allowed.

On October 2, 2017, counsel for the moving defendants also personally conferred with *pro se* defendant Dominick Fix-Gonzalez, and confirmed that he does not oppose this alternative motion.

Counsel for defendants Croy and Providence Medical Group have also advised the undersigned that they consent to this motion to consolidate the present case with Case 1192, again in the alternative and only in the event that Case 1192 is not dismissed outright on the pending motions in that case.

MOTION

Defendants George Fox University (“George Fox”), Gregg Boughton, Chris Casey, John Bates, Ian Sanders, Gabe Haberly, Craig Taylor, Dave Johnstone, Mark Pothoff and Sarah Taylor (referred to collectively as the “George Fox

Defendants”) hereby move the court for an order consolidating this case with Case 1192 for all purposes, including trial, pursuant to Fed. R. Civ. P. 42 (a)(2).

As noted above, this motion is expressly brought in the alternative to the pending motion, by George Fox and defendant Boughton, to dismiss Case 1192 as redundant pursuant to § 1915(e)(2)(B)(i), which defendant Croy joined in as well, and which plaintiff has indicated that he would not oppose if Case 1192 was allowed to proceed.

Supporting Legal Memorandum

The similarities between the thumb injury claim alleged as the only apparent claim for relief in this case, when compared with the thumb injury claims alleged in Case 1192, clearly justify consolidation as cases involving “a common issue of law or fact,” as provided in Rule 42(a). Given the similar age and procedural status of the two cases, consolidation for all purposes pursuant to Rule 42 (a)(2) is the preferred remedy in the event that outright dismissal of Case 1192 as redundant is not ordered on the pending motions in that matter.

As required by LR 42-3, the George Fox defendants further provide the additional information in support of this alternative motion:

- the only known related and pending case, in any federal or state court, is case 3:17-cv-01192-YY, *Samuel Wani vs. Thomas Croy, et al.*, currently assigned to Magistrate Judge Youlee You;

- the common questions of law or fact, in this case and Case 1192, are all questions relating to the thumb injury claims and allegations included in the Statement of Claim section of plaintiff's complaint in this matter, particularly under paragraphs 2 and 3 of the Statement of Claim section;
- on September 28, 2015, the George Fox defendants filed a comprehensive set of Rule 12 motions against the plaintiff's Complaint; the only pending motion in Case 1192 is the motion to dismiss as referenced above;
- the only deadlines or case management schedules in either case are those imposed by the Discovery Order (Docket No. 14) entered on August 8, 2017 in this case, and the Discovery Order (Docket No. 8) entered in Case 1192 on August 9, 2017.
- both cases are currently assigned to Magistrate Judge Youlee You, such that consolidation will not require reassignment to a different judge;
- all parties to this case, and all of the appearing parties in Case 1192, consent to consolidation as an alternative to outright dismissal of this case pursuant to Motion No. 1; and,

- consolidation is requested for all further proceedings, including pretrial, discovery, and trial.

Finally, and notwithstanding the filing of this alternative motion to consolidate, the George Fox defendants specifically intend to reserve all rights to contest jurisdiction, venue, the sufficiency of service of process, the sufficiency of the plaintiff's complaint, and all other defenses and procedural rights available under Fed. R. Civ. P. 12, including those presented in their recently-filed Rule 12 motions.

DATED this 3rd day of October, 2017.

THE RICKLES LAW FIRM, PC

By: /s/ Martin W. Jaqua
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **GEORGE FOX DEFENDANTS' UNOPPOSED ALTERNATIVE MOTION TO DISMISS** on the following parties on the 3rd day of October, 2017, by:

- ☒ Mail – placed in a sealed envelope with postage prepaid, deposited in the U.S. Mail at Portland, Oregon
- ☒ Electronic service pursuant to LR 5-1
- ☐ Hand delivery
- ☐ Facsimile transmission
- ☐ Overnight delivery

I further certify that said copy was served as indicated above and addressed to said attorneys at the addresses listed below:

VIA MAIL TO:

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